

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-191433

DATE: August 18, 1978

MATTER OF: Kirschner Research Institute

DIGEST:

1. Award of contract on basis of offer which states no exception to RFP requirements binds contractor to perform in accordance with such requirements. Whether actual performance so conforms is matter of contract administration and is not for GAO consideration.
2. Allegation that low offeror may have submitted below-cost proposal is not proper basis to disturb contract award to that firm.

Kirschner Research Institute (Kirschner) protests the award of a contract to the University of Maryland (University) under request for proposals (RFP) No. ASD-1-78, issued by the Department of Health, Education, and Welfare (HEW) to provide training and technical assistance to Head Start grantees in HEW region III.

The RFP required that the contractor's "Key Personnel" provide at least 240 days of effort each. In its technical proposal submitted on December 6, 1977, Kirschner stated:

"Kirschner provides more person days of effort of key staff than does the university. Kirschner provides a full benefit package for its employees, which consists of two weeks annual leave, eight paid holidays, and sick leave as necessary. This means that our commitment to provide a person full time results in the provision of 240 days of their personal effort to your work (260 days in a year - 10 days leave - 8 holidays - 2 days

average sick leave = 240). In contrast, the university's commitment of a person full time only gives * * * between 199 and 211 days of their service on the contract. The university permits 22 days annual leave, 15 days paid holidays, 12 days consulting leave for a total of 49 days. Adding 12 days of sick leave means that services of key staff are not available * * * 49 to 61 days per year. * * *

In view of Kirschner's statement, the contracting officer raised the matter of the 240-day requirement during telephonic negotiations with the University, and was advised that its key personnel intended to forego maximum leave usage, and the University would fully comply with the 240-day requirement. The University subsequently confirmed by letter of January 4, 1978, that the key personnel "are committed to working the 240 days" required by the RFP.

Letter Contract 130-78-2 was awarded on a firm-fixed-price basis to the University on January 9, and definitized on January 23. It included the following provision:

"In accordance with the Scope of Work, and in accordance with the Contractor's letter dated January 4, 1978, the staff members cited elsewhere in this contract, under the clause 'Key Personnel', are committed to working a total of 240 person-days of effort each under this contract. * * *

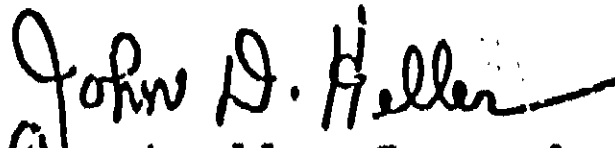
In its protest, Kirschner contends that the University was permitted to deviate from the 240-day requirement. The basis for the contention is the position reflected in the above excerpt from Kirschner's

technical proposal, i.e., that in view of the fringe benefits available to University personnel, "no individual having a 'full time position of employment' with the University likely will actually work 240 days under the contract." Kirschner also suggests that to meet the requirement the University will either have to employ additional staff personnel or devise some form of monetary compensation for leave not used, which will allegedly result in increased cost to the University. Kirschner contends that had such cost been included in the University's proposal, Kirschner's cost proposal would have been lower than the University's, and Kirschner would therefore have received the contract award.

In view of the University's commitment that each of the "Key Personnel" will provide 240 days of effort, the University became bound to comply with that RFP requirement when awarded the contract. 52 Comp. Gen. 955 (1973). Whether the University's performance actually complies is a matter of contract administration and is not for consideration by our Office. Virginia-Maryland Associates, B-191252, March 28, 1978, 78-1 CPD 238.

Concerning whether the University's cost proposal accurately reflected the ultimate cost of meeting the 240-day requirement, there is no legal basis to disturb the award even if a below-cost proposal was intended. P&S Systems Corporation, B-189132, October 4, 1977, 77-2 CPD 262.

The protest is denied.


Acting Comptroller General
of the United States